

Court No. - 88

Case :- APPLICATION U/S 482 No. - 32440 of 2023

Applicant :- Sone Lal And 6 Others

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Jitendra Pal Singh

Counsel for Opposite Party :- G.A.

Hon'ble Sanjay Kumar Singh,J.

1-Heard learned counsel for the applicants and learned Additional Government Advocate for the State/opposite party No.1.

2-This application under Section 482 Cr.P.C. has been filed by the applicants for quashing of the impugned order dated 17.12.2022 passed by Additional Civil Judge, (J.D.), Shahjahanpur in Case No. 76 of 2022 (Smt. Nirmala Devi vs. Sone Lal and others) whereby discharge application under Section 245(2) Cr.P.C. of the applicants has been rejected and order dated 23.05.2023 passed by Additional Sessions Judge, Court No. 3, Shahjahanur in Criminal Revision No. 23 of 2023 (Sone Lal and Others vs. State of U.P. and another), whereby revision preferred by the applicants has also been dismissed.

3- Brief facts of the case as mentioned in the application are that on 17.09.2018, opposite party no. 2 lodged N.C.R. no. 110 of 2018 against Ramkali, Kushmend and Sone Lal for the alleged offence under Section 323 and 504 I.P.C. alleging inter-alia that earlier some altercation had taken place between them and the matter was compromised but again they assaulted her on 17.09.2018 whereby she received injury. During investigation, opposite party no.2 filed a complaint against ten persons regarding same incident, in which learned Magistrate after recording statements under Section 200 and 202 Cr.P.C., summoned the applicants to face trial. The applicants filed discharge application but the same has been dismissed by the impugned orders.

4-Assailing the impugned orders, argument of

learned counsel for the applicants is that the parties are co-sharer related to same family. The husband of opposite party no. 2 has filed a civil suit no.180 of 2018 against the applicants, in which the applicant nos. 1, 2 and 3 were defendant nos. 1, 2 and 3 and they had also filed their counter claim but the suit of the plaintiff as well as counter claim of the defendants have been dismissed vide judgment and order dated 30.04.2022 on the ground that both parties are in joint possession over the property in dispute. The opposite party no. 2 filed the impugned complaint dated 20.09.2018 on false and concocted facts against the applicants in which applicants have been illegally summoned. It is also submitted that though the revisional Court has rejected the Criminal Revision of the applicants but in another case of similar nature, he has allowed the criminal revision, therefore, impugned orders of this case are liable to be quashed.

5-Per contra, learned Additional Government Advocate for the State submitted that it is settled law that at the stage of discharge, the court below is required to see whether on uncontroverted allegations as per the prosecution case and the material relied in support of same discloses the commission of any offence against the accused or not. The disputed questions of facts and defence of the accused cannot be taken into consideration at the pre-trial stage. Considering the allegations and material evidence on record, the prima-facie offence alleged against the accused/applicants is made out, therefore, there is no illegality in the impugned order.

6-Having examined the matter in its entirety and considering the submissions advanced by the learned counsel for the parties, I find that the grounds taken in the application reveal that many of them relate to disputed questions of facts. This Court is of the view that the appreciation of evidence is a function of the trial court at the appropriate stage. It is crystallized judicial view that at the stage of discharge, the Court is to examine the materials only with a view to be satisfied that prima facie case of commission of offence alleged has been made out

against the accused person. At the stage of framing charge, the court has to prima facie consider whether there is sufficient ground for proceedings against the accused. It has also been settled that charges can also be framed on the basis of strong suspicion. Marshaling and appreciation of evidence is not in the domain of the trial court at the time of considering discharge application. The broad test to be applied is whether the materials on record, if unrebutted makes a conviction reasonably possible. The final test of guilt is not to be applied at that stage.

7- In view of the above, I do not find any illegality, infirmity or perversity in the impugned orders. The discharge application of the applicants has been decided in accordance with law in the light of well settled principle laid down by the Apex Court. The applicants have a remedy under the law to raise all such plea in their defence before the trial court at the appropriate stage.

8-In view of the above, the relief as sought by the applicants in the instant application is refused.

9-However it is directed that if the applicants surrender before the concerned court below within two weeks from today and in case they apply for bail, the bail application of the applicants shall be disposed of expeditiously by the courts below in accordance with law and keeping in view the guidelines as laid down by the Apex Court in the case of Satender Kumar Antil vs Central Bureau of Investigation and another, reported in 2021 SCC Online SC 922.

10-For the period of two weeks from today or till the time of surrender of the applicants before the concerned court below, whichever is earlier, they shall not be arrested in the above case.

11-With the above observations and directions, this application under Section 482 Cr.P.C. is **disposed of**.

Order Date :- 27.10.2023
Saurabh